

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S REPLY
BRIEF**

76-4271

76-4271

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANTHONY DALLACASA and

MARTHA M. DALLACASA,

Appellants,

-against-

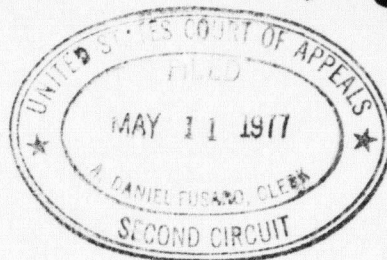
COMMISSIONER OF INTERNAL REVENUE,

Appellee.

Appeal from a Decision of the
UNITED STATES TAX COURT
located at New York, New York

Appellant's Reply Brief

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Docket No. 76-4271

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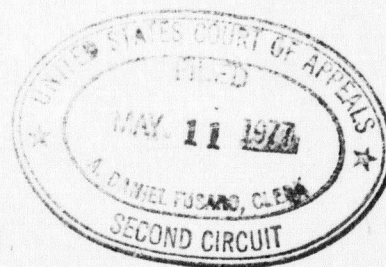


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THE UNITED STATES COURT OF APPEALS
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COMMISSIONER OF INTERNAL REVENUE,

Appellee.

Docket No. 76 - 4271

Appellant's

Reply Brief

In reply to the Appellee's Answering Brief, the Appellant would like to make the following points.

POINT I

The Stipulated Decision in the United States Tax Court did not have an actual and/or valid consent since the Taxpayer's Wife did not give her consent to the settlement.

Although the Decision was stipulated to in the United States Tax Court by the Taxpayer, it was not consented to by the Taxpayer's wife who did not actually sign or otherwise agree to the stipulation.

In a case like the one herein, where the Income Tax Returns involved are Joint Returns, the consent of both parties is needed to make a stipulated decision valid and binding.

The consent of only one spouse and not the other is not sufficient to give a stipulation any binding effect.

It must be remembered that when the matter first appeared before the Hon. William H. Quealy of the United States Tax Court on Monday, April, 1975, he absolutely refused to give the Taxpayer any time in order to obtain additional evidence and insisted upon setting the matter down for an immediated trial.

Because of this, there was great pressure on the Taxpayer

to resolve the matter immediately in some way, without being given the necessary time to obtain the required documentation. The Taxpayer thus found himself in a major quandary and unable to resolve the matter in a satisfactory way.

To hold that under the circumstances the Taxpayer and his Wife are not "aggrieved parties" who can appeal from an Order of the United States Tax Court to the Circuit Court of Appeals is a ludicrous argument at best.

It must also be remembered that although the Taxpayer is an Attorney, the Taxpayer and his Wife are appearing in the above entitled proceeding Pro Se, and without the benefit of outside counsel.

POINT II

Under the circumstances of this Case, the Appellee cannot make a valid claim that the Taxpayer has taken no action for a long period of time.

The argument has been made by the United States Attorney's Office that since the Taxpayer has not prosecuted this Appeal expeditiously from the time that the Notice of Appeal was filed, then the appeal should be dismissed or denied.

First and foremost, the Taxpayer herein was not familiar with the Rules and Regulations of this Honorable Court until he actually started to perfect the appeal.

Secondly, the Appellee itself is guilty of inequitable, unfair conduct since it was fully aware of the Taxpayer's delay in prosecuting the instant appeal.

If the Appellee was disturbed and/or upset about Appellant's delay in prosecuting this appeal, they had a readily available and appropriate remedy at hand inasmuch as they could have made a Motion

To Dismiss For Lack of Prosecution at any time.

The Appellee cannot now claim that the Taxpayer is guilty of Laches when they themselves have neglected to make the proper motion to dismiss the appeal at the appropriate time.

It must also be remembered that when the Taxpayer made a Motion to Docket the Appeal Out of Time in October 1976, the United States Attorney's Office did not raise this argument before the Court -- in fact, they did not even oppose the said motion.

POINT III

The Taxpayer, although an Attorney, was not familiar with the Practice in the United States Circuit Court of Appeals and in the United States Tax Court.

As stated previously, the Taxpayer, although an Attorney, is prosecuting this Appeal Pro Se, and has been unfamiliar with the procedure of this Honorable Court and of the Rules and Regulations of this Court.

In fact, the Taxpayer has handled the whole Tax matter both before the Internal Revenue Service and the United States Tax Court Pro Se, and without benefit of outside counsel.

Especially since the Taxpayer has handled the entire proceedings Pro Se before the United States Tax Court, it is possible that he may not have made the proper motions before the said Tax Court to have the matter reconsidered by the said Court.

But the only reason for the failure of the Taxpayer to make the proper motion to have the matter reconsidered by the United States Tax Court is the ignorance on the part of the Taxpayer of the proper procedure to follow in the said Tax Court.

CONCLUSION

In view of the foregoing, and in view of the mistake and newly discovered evidence, the Decision of the United States Tax Court should be annulled and set aside, and the case remanded for a new trial.

Yours, etc.

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